

*FCC Received 2/3/95 at 5:45 p.m.  
Diana J. Branchman*

TRANSCRIPT OF PROCEEDINGS ORIGINAL

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

IN THE MATTER OF:  
JAMES A. KAY, JR.

WT DOCKET NO. 94-147

DATE OF CONFERENCE: January 27, 1995 VOLUME: 1  
PLACE OF CONFERENCE: Washington, D.C. PAGES: 1-55

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**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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 In the matter of: )

JAMES A. KAY, JR. )

WT DOCKET NO. 94-147

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 The above-entitled matter came on for hearing pursuant to Notice before Judge Richard L. Sippel, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., 20554, on Friday, January 27, 1995, at 9:00 a.m.

**APPEARANCES:**

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25	Conference began: <u>9:00 a.m.</u> Conference Ended: <u>10:17 a.m.</u>

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P R O C E E D I N G S

(9:00 a.m.)

1 JUDGE SIPPEL: Good morning. My name is Richard  
2 Sippel. I'm the Administrative Law Judge that's been assigned  
3 to preside at this -- at this proceeding, and I've called this  
4 pre-hearing conference primarily in order to determine where  
5 things are in terms of discovery, how we can proceed with  
6 discovery, how the parties can proceed with discovery, and  
7 most importantly, trying to set a firm date for the beginning  
8 of the hearings. There's a lot to discuss. There's a lot of  
9 business to discuss this morning.

10 Before I start, I'd like to just have Counsel  
11 identify themselves for the record, please. Let's start with  
12 Counsel for the Respondent, Mr. Kay.

13 MR. BROWN: My name is Dennis C. Brown.

14 JUDGE SIPPEL: Good morning, Mr. Brown.

15 MR. BROWN: Good morning, sir.

16 MR. SCHWANINGER: This is Robert -- Robert H.  
17 Schwaninger, Jr.

18 JUDGE SIPPEL: Mr. Schwaninger.

19 MR. SCHWANINGER: Good morning.

20 JUDGE SIPPEL: And --

21 MS. STENGER: Good morning, Your Honor. Jenny  
22 Stenger. I'm an associate with Brown and Schwaninger.

23 JUDGE SIPPEL: Ms. Stenger. Okay. On behalf -- is

1 that it on behalf of Mr. Brown then --

2 MR. BROWN: Yes.

3 JUDGE SIPPEL: Mr. Kay rather. And behalf of the  
4 Bureau?

5 MR. SCHONMAN: Good morning, Your Honor. On behalf  
6 of the Chief Wireless Telecommunications Bureau, Gary  
7 Schonman, W. Riley Hollingsworth, Ann Marie Wypijewski, and  
8 William H. Kellett.

9 JUDGE SIPPEL: Those are going to be all the  
10 attorneys that will be appearing at various stages of this  
11 case?

12 MR. SCHONMAN: As I understand it, yes, sir.

13 JUDGE SIPPEL: All right, all right. Well, good  
14 morning. Mr. Schonman, Mr. Hollingsworth.

15 I think may I should start by again trying to clear  
16 up some -- some ground rules.

17 First of all, as I've indicated, and I know I've --  
18 I've seen numerous pleadings from Mr. Brown already. I want  
19 to be sure that everybody is clear that we're going to use the  
20 pleading format with respect to any relief that's going to be  
21 requested.

22 MR. BROWN: Yes, sir.

23 JUDGE SIPPEL: It does get confusing if we do start  
24 switching between letter correspondence type requests and --  
25 and pleadings. So I've always made it a policy let's stay

1 with the pleadings form. I will know, and equally important  
2 my legal tech will know when something comes into the office,  
3 it's a pleading, it gets a priority.

4           Secondly, with respect to who's going to be served  
5 with -- with pleadings, I leave that again to -- to the Bureau  
6 to be sure, and I think you've already done this now, but to  
7 identify, Mr. Brown, exactly who the attorneys are going to be  
8 presenting evidence in this case who would be expecting to  
9 receive pleadings, and certainly who could be contacted if  
10 there's some kind of an emergency situation or something needs  
11 to be worked out with respect to witnesses, or evidence or  
12 something like that. That -- footnoted with that comment, of  
13 course, is your -- the position you're taking on the record  
14 with respect to the notice of appearance by --

15           MR. BROWN: Yes, sir.

16           JUDGE SIPPEL: -- by Bureau Counsel. Now, I have --  
17 I have addressed those concerns of yours, perhaps not to your  
18 liking, but I have addressed them in a ruling, an omnibus  
19 ruling on the four Motions -- four of the Motions in any  
20 event, that I have before me, and I will have copies of those  
21 available before -- for both parties before you leave this  
22 morning. So I don't want to get into discussion with respect  
23 to those issues. I want to focus today on what I have  
24 prescribed in my Order with respect to what's to be conducted  
25 today.

1                   Now, let me start by saying that I've received this  
2 -- with respect to the status reports and with respect to the  
3 allegations in the Order to Show Cause. I accept this. I  
4 understand this is an extremely serious matter with respect to  
5 Mr. Kay. I understand what's at stake here. Here is an Order  
6 to Show Cause which has set the burden on the Bureau to come  
7 forward with the evidence in the first instance. As I see it  
8 that undercuts -- I'm saying, this is in terms of -- I'm  
9 saying this in a way which I think is positive to everybody  
10 that's going to be concerned with this case, is it cuts back  
11 on the need for a lot of discovery back and forth with respect  
12 to finding out what's going on and what each party has. The  
13 Bureau's going to have to show you -- I'm talking to you, Mr.  
14 Brown --

15                   MR. BROWN: Yes,, sir.

16                   JUDGE SIPPEL: -- going to have to show Mr. Kay what  
17 they have, and then it's going to be your obligation to meet  
18 it. And I understand from the -- this is -- I'm getting back  
19 now -- I'm doing what I said that I wouldn't do, I'm going  
20 back to your -- to your Motion where you've -- you  
21 basically -- you've criticized the manner in which the  
22 allegations have been asserted against your client since you  
23 don't have enough information to respond. So I want to focus  
24 on that. I want to focus on that with respect to discovery.  
25 I want to focus on that with respect to how the Bureau is

1 going to get its case in. I'd like to see the Bureau's case  
2 be solidified before you undertake any extensive discovery.  
3 Now, there might be certain preliminary matters that you want  
4 to get cleared up and we can -- we can -- we can talk about  
5 that, we can work procedures out for that. That's why I've  
6 been trying to push for the stipulations. I'm sure that  
7 there's a lot of material here that can be stipulated to at  
8 some point in time, once it gets -- there's going to be  
9 records, there's going to be documents, there's going to be  
10 filings that were made or that weren't made, and this is grist  
11 for stipulation which perhaps could address several of the  
12 allegations, several of the paragraphs.

13 Now, having said that, that's my preliminary  
14 statement in terms of how I see this case progressing. But  
15 I'm going to now ask Bureau Counsel to tell me what they have  
16 in mind in terms of schedule.

17 MR. SCHONMAN: Well, Your Honor, right now we're in  
18 the process of developing Motions pursuant to discovery. We  
19 plan to serve on Mr. Kay a Request for Admissions and  
20 Genuineness of Documents as you directed in your -- your  
21 initial Order.

22 As we said in our Status Report, we also intend to  
23 conduct depositions. We know for sure we would like to depose  
24 at some point Mr. Kay. There may very well be other  
25 individuals who we want to depose.



1           We also intend to serve on opposing Counsel  
2 Interrogatories. And based on the -- and Document Requests as  
3 well. Based on the response to the Interrogatories as well as  
4 the Document Request and the Request to Admit and Genuineness  
5 of Documents, at that time we'll be in a position to know who  
6 it is we'd like to depose. We have to see all the documents  
7 first and ask intelligent questions of potential witnesses.

8           JUDGE SIPPEL: Well, okay. Well, I hear --

9           MR. SCHONMAN: And --

10          JUDGE SIPPEL: I'm sorry, go ahead, finish.

11          MR. SCHONMAN: By mentioning all this and keeping in  
12 mind that for the past few weeks we've had to respond to a  
13 number of pleadings regarding a number of different matters,  
14 none of which go to the merits of the case really, we would  
15 like at this point to --

16          JUDGE SIPPEL: Are these pleadings that I'm aware  
17 of?

18          MR. SCHONMAN: Pleadings that have been directed to  
19 you, Your Honor, as well as to the Commission.

20          We would like to devote our attentions to commencing  
21 discovery, and we have every intention of doing that with the  
22 utmost haste.

23          JUDGE SIPPEL: Well, all right. I hear you saying  
24 it that way, and that's all fine and good. But the thing  
25 that's got me a little bit troubled is that you got paragraphs

1 in the -- not you rather, but the Commissions Designation  
2 Order, Order to Show Cause, has allegations in there on --  
3 such as in paragraph three,

4 "Information available to the Commission indicates --"  
5 These are kind of generalizations that -- immediate -- I'm  
6 saying to myself, okay, what are we talking about specifically  
7 here? Sure there might be some general complaints, and  
8 general this and general that. But what are -- you know, is -  
9 - are there specific -- there must be specific evidence to  
10 back up each of these allegations in each of these paragraphs.  
11 And it would seem to me that this would be the place that  
12 you'd be starting would be to assemble that information and  
13 then you may have to build that up with some discovery. But  
14 maybe -- Mr. Hollingsworth maybe can address this himself, but  
15 it would seem to me, and I -- I mean, the reason I say it that  
16 way is I understand Mr. Schonman is assigned to this case from  
17 the Mass Media Bureau, and Mr. Hollingsworth, I'm sure you  
18 have had a longer time with the evidence in connection with  
19 this case. Am I correct --

20 MR. HOLLINGSWORTH: That is true.

21 JUDGE SIPPEL: -- in that assumption? All right,  
22 what I'm saying is that it would seem to me that a place to  
23 start would be to build up your evidence that you have in-  
24 house and I'm sure that it's there, with respect to these and  
25 then make a lean but mean determination as to what you're

1 going to need to fill in the gaps. And if my instincts are  
2 right on that, it shouldn't be a heck of a lot of discovery  
3 and we should be able to put it on a pretty short time  
4 schedule. That would -- react to that, please.

5 MR. SCHONMAN: Well, Your Honor, certainly we do  
6 have some documents in-house already which we believe are  
7 relevant to the issues, but we have every reason to believe  
8 that there are documents out there which we don't have yet  
9 which are relevant. We have every expectation of -- as I  
10 said, of requesting Admissions of Facts, requesting documents  
11 and servicing Interrogatories. Those are the items which Your  
12 Honor specified in your initial Order in this proceeding and  
13 we certainly intend to comply with that and use those  
14 discovery tools. I --

15 JUDGE SIPPEL: Well, I was meaning those to be used  
16 -- giving you authorization to use those before we met today,  
17 in case you wanted to embark on that. I really would not --  
18 I'm not thrilled with the idea of exchanging Interrogatories.  
19 But I mean, if -- you're right. The procedures are there --  
20 the discovery procedures are there, I'm not going to deny you  
21 the right to use them. But I think you can understand where  
22 I'm coming from. I don't want to engage in too much discourse  
23 on this because I'm not going to require you to tip your hand  
24 with respect to your case today, but there is going to come a  
25 time and it's going to -- and what I have in mind, what I'm

1 going to prescribe in this case is that you're going to have  
2 to put your case out first. You're case is going to have to  
3 be delivered to them. All your documents and all your lists  
4 of witnesses, before they're going to have to file their case,  
5 exchange their case with you.

6 MR. SCHONMAN: Your Honor, are you suggesting that  
7 on the exhibit exchange date that we not receive their  
8 exhibits on the same date that they receive ours?

9 JUDGE SIPPEL: Not on the same date. That right,  
10 not on the same date. We'll have a common date of which  
11 they'll be received into evidence, an admissions date, but  
12 you've got the burden of proof. You've got the burden of  
13 proceeding. I'm not going to put them to the task of having  
14 to run around and figure out what you're doing, simultaneously  
15 with what you're doing. What I'm trying to do, if you'll bear  
16 with me, what I'm trying to do is to be in a position to cut  
17 them off from seeking discovery of you while you're trying to  
18 prepare your case. And this, to me, is the most common sense  
19 way of doing it. There should be -- they should not -- now,  
20 they're certainly going to want to respond to what your  
21 evidence is, but in the scheme of things, as I view what is  
22 being alleged here, there shouldn't be all that much that  
23 they're going to need in terms of a volume. There may be some  
24 specific witnesses that they would be calling to rebut. That  
25 depends, again, on the nature of how this proof is coming out.

1 But this has been -- this -- these allegations, as I  
2 understand it, are based upon facts that were discovered in  
3 the course of investigation. I mean, you know, there's been  
4 an investigation and the facts should be pretty self-evident  
5 with exceptions that you're pointing out.

6 MR. SCHONMAN: Well, Your Honor, the facts that were  
7 developed during the investigation are what precipitated the  
8 issuance of this hearing designation Order. Certainly, in  
9 order to develop our case and meet our burdens, we have to  
10 conduct a discovery. I don't think there's any question about  
11 that. Quite frankly, I'm not aware of any case in which  
12 exhibit exchange has been on different dates.

13 JUDGE SIPPEL: I had one. Don't worry about that.  
14 I have one.

15 MR. SCHONMAN: And I don't know, frankly, to what  
16 end that would serve.

17 JUDGE SIPPEL: I told you -- I told you the end it  
18 will serve.

19 MR. SCHONMAN: We have burdens in the case that's  
20 clear, and on the exchange date we will certainly put forth  
21 our list of witnesses, and the subject matters about which  
22 they'll testify, and we'll provide all the exhibits upon which  
23 we will rely to meet our burdens as is done ordinarily in all  
24 cases, and we would expect on that date to receive the  
25 documents, and the list of witnesses that Mr. Kay will be

1 relying on. And then after that, as you said, we would have  
2 an admission session.

3 JUDGE SIPPEL: Uh-hum, uh-hum. You will -- I don't  
4 mean to cut you off. But you will get it, I mean, believe me.  
5 You will get all that they have to give and it will be in  
6 advance of an admission session. So you're not going to get  
7 sandbagged, you're not going to have a shorter time fuse to  
8 react to things. It's -- I've just stated in terms of how I  
9 see this case in terms of the evidence and in terms -- and  
10 particularly as that evidence relates to the need for  
11 discovery.

12 Now, if -- as I view it, if I just open this up to  
13 you both go down your separate paths and prepare for things,  
14 and you got the burden, you're the Bureau, has got the burden,  
15 and that means I have a reasonable assumption to say that you  
16 also have the evidence. Now, you don't have all the evidence,  
17 but you have the evidence to back up these allegations.  
18 You're certainly ahead of them, and they don't know what you  
19 have. And I'm trying to put the case in a situation where  
20 they're not -- where I'm not getting -- I'm not dragging all  
21 the parties into squabbles about whether or not your  
22 information is protected by this privilege, or that privilege,  
23 or getting it to -- well, you know what the squabbles are.  
24 We've been through these before. I'm trying to avoid that as  
25 much as I possibly can. I know that's going to happen, but it

1 | seems to me in a case like this where the government has done  
2 | the investigation, the government's made the allegations, the  
3 | government's got the evidence to back up those allegations,  
4 | that you've got the head start. And if we're going to keep  
5 | any kind of a time schedule in -- I mean, we're already  
6 | starting off with a trial date for March 27, that's been --  
7 | that's already been set, and that's what we have to talk about  
8 | today. But if we're going to talk in terms of getting this  
9 | case completed in 1995, I think we have to use a little bit of  
10 | -- I think that this is the approach it's going to take to get  
11 | it done.

12 |           Now, I understand also that -- I mean, I know that  
13 | there's a -- I'm aware of the fact that there's a Bevens Case  
14 | that's been filed, we're up in Harrisburg. So there's other  
15 | things going on around here, and I'm not going to let this  
16 | case be used to -- and I'm not saying that it has been. I  
17 | don't mean to say that I'm reacting to something I've seen.  
18 | But I'm just letting everybody know up front that I'm not  
19 | going to let that case distract what's going on here. Unless  
20 | somebody serves me with an Order and enjoins the proceeding,  
21 | we're going forward, and we're going forward for purposes of  
22 | this case and not for anything else.

23 |           Now, I mean, I really want to get down to some brass  
24 | tacks in terms of dates, and again, I'm a little bit troubled  
25 | because what I saw -- again, this is the Bureau's Status

1 Report, and as you pointed out this morning to me, Mr.  
2 Schonman, that, you know, these representations that -- I'm  
3 reading now from your Status Report,

4 "At this early stage in the proceeding the  
5 Bureau has not yet identified the persons  
6 it intends to call for examination at the  
7 hearing."

8 Now, that's a troubling statement in light of a case like  
9 this. What do I do? How do I determine how much time you're  
10 going to need to find out who all these people are and how  
11 you're going to -- where you're going to depose them? Are we  
12 talking about being -- you know, going around the country and  
13 deposing numbers of people or are you just talking about a few  
14 select people or --

15 MR. SCHONMAN: Your Honor, we haven't conducted  
16 discovery yet. We don't know what the universe of people --  
17 what the universe of people is who we would want to call as  
18 witnesses. We're not at that stage yet where we're ready to  
19 tell you who our witnesses will be, exactly what documents we  
20 have to present. The hearing hasn't started yet. The exhibit  
21 exchange hasn't occurred yet. Until we conduct discovery and  
22 get the documents from Mr. Kay, and get responses to  
23 interrogatories, and then follow-up with depositions, we can't  
24 give you a list of witnesses. We just don't know who they  
25 are.



1 critical that you haven't --

2 MR. SCHONMAN: Your Honor --

3 JUDGE SIPPEL: -- that you haven't filled (sic) me  
4 the list, I'm saying that in terms of numbers, do you have a  
5 general feel? What involved here?

6 MR. SCHONMAN: In terms of broad numbers?

7 JUDGE SIPPEL: In broad numbers, yes.

8 MR. SCHONMAN: In terms of broad numbers we know for  
9 sure we would like to depose Mr. Kay.

10 JUDGE SIPPEL: That's one.

11 MR. SCHONMAN: As I understand it, persons from the  
12 Wireless Telecommunications Bureau have not spoken with him  
13 incident to their investigation.

14 JUDGE SIPPEL: All right, no problem with Mr. Kay.  
15 But beyond him?

16 MR. SCHONMAN: There will be persons, I have to  
17 assume, who will learn about when we receive Responses to  
18 Interrogatories and Document Requests. I don't know how many  
19 there will be. I mean, certainly I don't want to present  
20 redundant witnesses. I certainly wouldn't indulge in that  
21 activity. I can see down the road perhaps having between ten  
22 and twenty witnesses testify at the hearing. It's just a  
23 broad figure. It's -- but it's just a gut reaction I'm giving  
24 you. I just don't have a more firm for you as to the number  
25 of people who will testify. The number could change

1 dramatically depending upon the results of discovery. I mean,  
2 we are in the initial stages of this case, and we have been  
3 precluded from commencing discovery because we've had to  
4 respond to a variety of pleadings that have been filed and  
5 directed to yourself and to the Commission.

6 JUDGE SIPPEL: Well --

7 MR. SCHONMAN: It's taking a lot of time.

8 JUDGE SIPPEL: Well --

9 MR. SCHONMAN: We would -- we have every intention  
10 of commencing discovery. We'd like the opportunity to do  
11 that. We want to get this case going forward.

12 MR. SCHWANINGER: Your Honor, may I speak for a  
13 moment?

14 JUDGE SIPPEL: Yes, sir.

15 MR. SCHWANINGER: It appears to me that one of the  
16 problems we have in this case is that our opposition chooses  
17 to use discovery for the purposes of coming out with valid  
18 claims against our client. It also is apparent by the Order  
19 to Show Cause and the generalities therein. It would appear  
20 to me that what our opposition would like to do is go through  
21 discovery so they can find something wrong to shore up their  
22 case, that at this point they don't appear to have any  
23 evidence and they don't appear to have any witnesses to bring.  
24 It could be that the Order to Show Cause is nothing more than  
25 a fishing expedition and that we're here discussing that he

1 might find ten witnesses after he goes through deposition, or  
2 he might find ten witnesses after he asks for Request for  
3 Production of Documents. Discovery is not supposed to be used  
4 for that purpose. Discovery is supposed to be used to shore  
5 up what you already know. And what Mr. Schonman's telling me  
6 is right now he doesn't know anything. And quite frankly, I  
7 think it's improper to ask our client to participate in his  
8 fishing expedition so that he can find something to charge our  
9 client with with specificity. That's one of the reasons why  
10 we asked for more specificity in the original Order.

11 JUDGE SIPPEL: Well, that's -- yeah, that's -- you  
12 can respond to that Mr. Schonman.

13 MR. SCHONMAN: Your Honor, with all due respect to  
14 opposing Counsel, it's all rubbish. The Commission in its  
15 wisdom, the full Commission has issued this Hearing  
16 Designation Order based on the evidence it had, based on  
17 whatever source of that evidence, whether it was from the  
18 investigation or what else. The Commission has issued a  
19 document in which it set forth the facts and the law.

20 Now, if opposing Counsel does not like the Hearing  
21 Designation Order, or wishes to avoid going to hearing, their  
22 recourse was to seek reconsideration of that Hearing  
23 Designation Order. Again, they've been trying through a  
24 variety of pleadings coming to this conference, to avoid to  
25 going to hearing. Now, they are suggesting that the Bureau

1 has no right to conduct discovery. It's ridiculous. Of  
2 course we have a right to conduct discovery.

3 JUDGE SIPPEL: Well --

4 MR. SCHONMAN: The evidence that the Commission had  
5 before it was enough to set this case for hearing. Now we are  
6 going to conduct further discovery so that we can firm up our  
7 case. We have the burdens. We are going to present Your  
8 Honor with all the evidence we have to muster. The fact that  
9 we're conducting discovery should not suggest by any means  
10 that we don't have a case, and any suggestion to the contrary  
11 is ridiculous.

12 JUDGE SIPPEL: Well, let's try and bring the level  
13 of that issue down a little bit to a real world level, a more  
14 pedestrian level. These arguments are being addressed -- were  
15 addressed in the Motions.

16 I'm expressing my concern. My position here is is  
17 as a trial judge. I'm the one that's got to see that there's  
18 a record put together that I can make a decision on. So I'm  
19 starting with the proposition that who's got the burden of  
20 proof here? And if you've got the burden of proof, and  
21 particularly in the context of a government enforcement  
22 action, there's got to be evidence behind those allegations.  
23 As I say, it's in-house, it's a start.

24 MR. SCHONMAN: And we will present that evidence,  
25 and any other evidence that we accumulate as a result of

1 discovery at the hearing.

2 JUDGE SIPPEL: I know you will. But I'm -- I know  
3 you will do that. But what I'm saying is I'm trying to get  
4 this in the stage where there's a meaningful discovery without  
5 them having to issue to -- without them coming to me looking  
6 for broad discovery against the Bureau with respect to what  
7 all those -- what all that evidence is that you are going to  
8 introduce in court one day.

9 Now, I can do that by setting up the stage -- this  
10 staged exchange. I've explained to that you first. My second  
11 concern is -- and you've answered that. You've answered that  
12 as best you can. I'm saying, how far you have to go beyond  
13 what you already have in terms of -- so I can estimate a --  
14 how long is it going to take to complete discovery?

15 MR. SCHONMAN: All right.

16 JUDGE SIPPEL: All right now --

17 MR. SCHONMAN: Perhaps then we should talk about  
18 dates.

19 JUDGE SIPPEL: What do you have in mind?

20 MR. SCHONMAN: We would like to commence our  
21 discovery and we would like three weeks to begin that. That  
22 is, within three weeks we will serve upon opposing Counsel  
23 Interrogatories, Document Requests, Requests for Admissions  
24 and Genuineness of Documents.

25 JUDGE SIPPEL: Why -- it's going to take three weeks

1 to get that ready to go out?

2 MR. SCHONMAN: Your Honor, this is a very complex  
3 case. There are a lot of licenses involved. We are  
4 communicating between the Washington office and our office in  
5 Gettysburg. We have to do everything by E-Mail and FAX  
6 machine. We have been consumed for the last few weeks  
7 responding to various pleadings filed on behalf of Mr. Kay.  
8 We've made every attempt to commence discovery, but we've been  
9 precluded from doing that until now.

10 JUDGE SIPPEL: Well, I want the record to be very  
11 clear up front that I gave the Bureau that authorization back  
12 on December 22 or somewhere in there.

13 MR. SCHONMAN: And immediately thereafter --

14 JUDGE SIPPEL: To start --

15 MR. SCHONMAN: -- the pleadings started coming in.

16 JUDGE SIPPEL: All right. Well, I just want to be  
17 sure that -- I mean, that I understood right up front that  
18 there was going to be a certain amount of this type of  
19 discovery so that you could get your case perfected. I mean,  
20 I understand there's complexities in these allegations, and  
21 complexities, you have to get it -- you have to get all the  
22 fine points refined, you've got to get it honed down. That  
23 takes time. I understand all that. But you still must have a  
24 heck of a good case with respect to each of these allegations  
25 sitting someplace in Gettysburg or here.

1           MR. SCHONMAN: Yes, sir. And in the Request for  
2 Admissions and Genuineness of Documents we are accumulating a  
3 lot of facts that we are aware of, and when we serve those  
4 requests on opposing Counsel, that will go very far towards  
5 smoothing this case out and shortening the length of the case.  
6 That will go very far towards stipulating to facts. If Mr.  
7 Kay will admit to the facts in our Request, that will go very  
8 far, but there are a lot of facts involved. We've already  
9 started preparing it, and there's a lot more work to be done  
10 on it.

11           I'm not -- I don't want to suggest to Your Honor by  
12 what I've said this morning that we have not been working  
13 diligently on preparing discovery tools. We have them. But  
14 our energies have been sort of deflected because we've had to  
15 pursue other things in the interim. We believe it will take  
16 three weeks. By that time we will be able to serve on  
17 opposing Counsel these particular discovery tools that I've  
18 mentioned. And I think their responses to that will go very  
19 far towards streamlining this case.

20           JUDGE SIPPEL: Well, I am -- I must say that at a  
21 minimum I'm disappointed to hear that because I really -- I  
22 know that you're not going to get this case ready for trial in  
23 a couple of weeks. I'm not suggesting that. But we have to  
24 wait for three weeks just so they can get Interrogatories,  
25 Request for Admissions to respond to, and then they have

1 whatever the require -- the Rules permit them a period of time  
2 to respond to all that --

3 MS. STENGER: Thirty-five days, at least.

4 JUDGE SIPPEL: And then if you don't know -- you're  
5 not satisfied with what you get, we go on down the road to  
6 enforcement on that. I mean, gosh, that's going to take some  
7 time.

8 MR. BROWN: Your Honor, maybe --

9 JUDGE SIPPEL: Well, I just want to finish up. I  
10 don't want to --

11 MR. BROWN: Sorry.

12 JUDGE SIPPEL: -- leave this Mr. Schonman as though  
13 that, you know, I don't want to paint anybody as being the bad  
14 guy on this. I mean, I, you know, I'm just looking at the  
15 Order for the first time just a short period of time ago, and  
16 it is a complicated evidentiary case. There's no question in  
17 my mind about that.

18 MR. SCHONMAN: Extremely.

19 JUDGE SIPPEL: All right. And I'm listening to you  
20 very carefully this morning too. But I just want to -- I just  
21 don't want to sit here and just go along with all of this and  
22 think that it doesn't -- it doesn't -- that I don't -- that it  
23 doesn't impact me because I'm trying to push this case to a  
24 trial date, and now I'm hearing that this is going to be a  
25 very dif -- that's my task is going to be different than I saw



1 it when I walked in the door this morning. But you're  
2 educating me, Mr. Schonman. I'm not being critical about  
3 this.

4 Mr. Brown, you've been very quiet.

5 MR. BROWN: Thank you, Your Honor.

6 (Laughter)

7 I would respectfully suggest that there may be a  
8 difficulty of terminology or definition here. Mr. Kay is not  
9 asking for evidence that the Bureau has at this point. But  
10 before the Bureau commences discovery, we're respectfully  
11 requesting that what the facts are that constitute the  
12 elements of the issues alleged against Mr. Kay are be  
13 disclosed to Mr. Kay because if that isn't done before the  
14 Bureau commences discovery, discovery would be unfounded and  
15 we would have to engage in a great deal of controversy back  
16 and forth potentially consuming a great deal of time of the  
17 presiding officer which we don't want to do. But at this  
18 point, with the single exception of issue 10(b), designated  
19 paragraph 10(b), there is not a single fact alleged against  
20 Mr. Kay that gives him notice of what the allegation against  
21 him is. Not what the evidence is, but what the allegation is.  
22 And given that situation, the Bureau would apparently attempt  
23 to ask most anything and we would resist the attempt to ask  
24 most anything. They don't even have a witness at this point  
25 as to 10(b). And whether they should be permitted to go